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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5058

DAVID LEVELL W., a minor,
Petitioner,
v.
THE STATE OF CALIFORNIA,
Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

QUIN DENVIR
State Public Defender

STEFFAN IMHOFF
Deputy State Public Defender

107 South Broadway, Suite 9111
Los Angeles, California 90012
Telephone: (213) 620-5469

Attorneys for Petitioner

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Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The petitioner, DAVID LEVELL WALLS, asks leave to file the attached Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Four. Without prepayment of costs and to proceed in forma pauperis pursuant to rule 46 of the United States Supreme Court Rules and 28 USC 1915(a).

The petitioner's affidavit in support of this motion is attached hereto.

Respectfully submitted,

QUIN DENVIR
State Public Defender

By _____
STEFFAN INHOFF
Deputy State Public Defender

Attorneys for Petitioner

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Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, DAVID LEVELL WALLS, being first duly sworn, depose and say that I am the petitioner, in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

The petitioner was arrested in his home by two Los Angeles police officers who had neither a warrant nor reasonable or probable cause for his arrest. The sole basis for petitioner's arrest was his mother's consent. The question presented is whether his mother could effectively waive petitioner's Fourth Amendment rights.

/ /

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of these proceedings are true.

1. Are you presently employed? No, I never have been.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

3. Do you own any cash or checking or savings account? No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

5. List the persons who are dependent upon you for support and state your relationship to those persons. None.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Walls David L.
DAVID LEVELL WALLS

Duly witnessed and sworn to before me, a Notary Public, this 8th day of July, 1980.

OFFICIAL SEAL
ADRIAN K. PANTON
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Oct. 21, 1983

Adrian K. Panton
NOTARY PUBLIC (or other notary notation)

80-5058

Supreme Court, U. S.
FILED
JUL 14 1980
MICHAEL RODAK, JR., CLERK

80-5058

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NO. 80-

DAVID LEVELL W., a minor,

Petitioner,

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

QUIN DENVIR
State Public Defender

STEFFAN IMHOFF
Deputy State Public Defender

107 South Broadway, Suite 9111
Los Angeles, California 90012
Telephone: (213) 620-5469

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IN THE

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OCTOBER TERM, 1980

NO. 80-

DAVID LEVELL W., a minor,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

QUESTION PRESENTED

Whether the police violate a young man's Fourth Amendment rights when they arrest him, in his home, without a warrant, and without reasonable or probable cause, solely on the basis of his mother's consent?

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OCTOBER TERM, 1980

NO. 80-

DAVID LEVELL W., a minor,
Petitioner,
v.
THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

Petitioner, DAVID LEVELL W., respectfully prays that a writ of certiorari issue to review the majority opinion of the California Court of Appeal which affirmed the juvenile court's holding that the petitioner's warrantless arrest, although without probable cause, was nevertheless lawful because it was consented to by his mother.

OPINIONS BELOW

The majority and dissenting opinion of Division Four, Second Appellate District, California Court of Appeal, is set forth as Appendix A to this petition. It is also reported as In re David W., 103 Cal.App.3d 469, 163 Cal.Rptr. 87 (1980). A copy of that court's order denying our petition for rehearing is set forth as Appendix B. A copy of the California Supreme Court's order denying our petition for hearing is set forth as Appendix C.

JURISDICTION

Petitioner invokes the jurisdiction of this court under 28 U.S.C. section 1257(3) since a right is claimed under the Fourth Amendment to the Constitution of the United States.

The California Court of Appeal entered its order rejecting petitioner's Fourth Amendment claim on March 18, 1980, and denied petitioner's request for rehearing on April 7, 1980.

The Supreme Court of California denied hearing in this case on May 14, 1980. The instant Petition for a Writ of Certiorari is filed within sixty days of that order. (Rules of the Supreme Court of the United States, effective June 30, 1980, rule 20.1.)

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> "The right of the people to be secure in their persons, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

STATEMENT OF THE CASE

A. History of the Case

On March 9, 1979, a petition was filed in the juvenile division of the Los Angeles County Superior Court under California Welfare and Institutions Code section 602 alleging that the petitioner violated California Penal Code section 459, burglary, a felony (CT 8).[1/]

---

1. Reference is to the Clerk's Transcript of the juvenile court's proceeding.

/ /

On April 16, 1979, the juvenile court conducted a combined motion to suppress and adjudication hearing. The minor moved to suppress his confession on the grounds, inter alia, that it was the product of an unlawful warrantless arrest, without probable cause, in violation of his Fourth Amendment rights. The court denied the motion to suppress, and found that the petition was true. Thus, the minor was found to be a person described by section 602 of the California Welfare and Institutions Code (CT 13).

On April 30, 1979, a dispositional hearing was held before the juvenile court. The minor was ordered removed from the custody of his mother. Physical confinement was set at a maximum period of two years (CT 14).

Petitioner appealed the wardship order of the juvenile court to the California Court of Appeal, Second Appellate District. Petitioner's major contention on appeal was that his confession was tainted in that it resulted from an unlawful, warrantless arrest, in violation of his state and federal constitutional rights. On March 18, 1980, Division Four of that court affirmed the judgment and order of the juvenile court in a published decision set forth in Appendix A. Justice Jefferson dissented from the opinion. The court's majority opinion rejected the petitioner's claim that his Fourth Amendment rights had been violated. A petition for rehearing was denied on April 7, 1980.

The California Supreme Court denied a petition for hearing on May 14, 1980. Justices Tobriner and Newman were of the opinion that the petition should be granted. (California Supreme Court Notes, May 14, 1980.)

B. Statement of the Facts

On March 8, 1979, petitioner was arrested while in his home without a warrant or probable cause, by two Los Angeles police officers. The facts leading up to this arrest are taken

from the Factual Summary in the majority opinion of the California Court of Appeal:

"At the hearing on the pretrial motion to suppress evidence, Gregory Johnson testified that he is a police officer for the City of Los Angeles. On March 8, 1979, he was told by Investigator Tietgen that Tietgen had been in contact with appellant's mother 'concerning one of her children who allegedly had been involved in a burglary of a house down the street, and she was to bring him in and she had failed to do so.' Tietgen requested that Johnson and Officer Tyler go to the woman's home and find out when she would bring the minor in to the police station.

"The officers went to the minor's home at approximately 8 a.m. on that day. In response to their knock on the front door, a young boy, age 10 to 12, answered the door. The officers were in uniform, identified themselves, and asked to speak to his mother. The boy asked them to wait a minute, and the officers waited on the porch while he went toward the back of the house.

"The boy returned to the door within a short time and said, 'My mother wants you to come in.' He directed them to a bedroom, where they saw appellant's mother lying in bed. The officers explained the purpose for their visit, and asked the woman why she had not brought her son to the station the day before, as she had said she was going to do. She explained that her car

had broken down. Officer Johnson asked, 'Can you bring him in today?' and she responded that she could not because her car was still not working. She then pointed out appellant, who was sleeping in another bed in the same room, and called to him to wake up. Johnson asked the woman when she would be able to bring appellant down to the station, and she said, 'Well, you officers are here. You can take him down.' She told the officers she had been having trouble with her son, and that if he had been involved in a burglary, she wanted to know about it because she would contact his probation officer. She then told the officers to take the appellant to the station.

"Appellant's mother told appellant to get out of bed and get dressed because the officers were waiting for him. The minor, who was then 13 years of age, complied. Once he was dressed, he left with the officers and they drove him to Newton Station. Before the minor got into the police car, he was handcuffed by Johnson to prevent him from jumping out of the car en route.

"At the station, the minor was read and had explained to him his Miranda rights, waived his rights, and confessed to the burglary."

REASONS FOR GRANTING THE WRIT

ARGUMENT

A YOUNG MAN'S FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE ARREST CANNOT BE WAIVED BY HIS MOTHER

The facts in this case are undisputed and clearly frame the question presented. Two uniformed Los Angeles police officers came to petitioner's home without reasonable or probable cause to arrest or detain petitioner.

The respondent conceded that there was no evidence introduced at the motion to suppress to establish probable cause to arrest the petitioner (Appendix A, p. 5). Based solely on his mother's consent, petitioner, a 13-year-old minor, was handcuffed and taken to the police station for questioning, where he confessed to participating in the charged offense.

The juvenile court and California Court of Appeal found that the police had not violated the petitioner's Fourth Amendment rights. The majority decision of the California Court of Appeal holds that a minor may be arrested in his own home without a warrant or reasonable or probable cause if his mother consents to the arrest. Thus, a parent is given the absolute right to waive her child's Fourth Amendment protection against unreasonable arrests. The petitioner is aware of no other decision where it has been held that one person may waive another person's right to be free from an unreasonable arrest under the Fourth Amendment. The majority opinion cites no federal authority for this novel view, but simply relies on a parent's general right to supervise and control her child.

In In re Scott K., 24 Cal.3d 395, 155 Cal.Rptr. 671, 595 P.2d 105 (1979), the California Supreme Court held that a father may not waive his son's constitutional right to be free from an unreasonable search. That decision relied extensively on decisions of this Court which recognize the constitutional rights of juveniles.

In the instant case, Justice Jefferson, in his dissenting opinion, persuasively argued to why the decisions of this Court, as applied in Scott K., compel the conclusion that the petitioner's arrest was unlawful.[2/]

> "I start with the premise set forth in Dunaway v. New York (1979) ___ U.S. ___, 60 L.Ed. 2d 824, 838, in which the court observed 'that detention for custodial interrogation -- regardless of its label -- intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.' In the case at bench, the minor's removal and transfer from his home to the police station by the police officers constituted a clear case of 'detention for custodial interrogation.' The inexorable result was that the minor was entitled to the safeguards against an illegal arrest. The facts demonstrate clearly that this was a warrantless detention which was not based upon any probable cause for arrest. It follows, therefore, that if this warrantless detention is to be constitutionally justified, it must be predicated upon the mother's consent and direction to the officers to take her 13-year-old boy into custody.
>
> "The majority takes the view that the principle of parental control of parents over their children justified the direction from the minor's

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2. The citations and footnote from In re Scott K., supra, omitted from Justice Jefferson's dissenting opinion are included herein.

mother to the police officers to detain and arrest the minor and take him to the police station. The decisional law, however, has made it crystal clear that the supervisory authority and control of parents over their children are not unlimited. It appears to be the majority's position that a 13-year-old minor possesses no independent constitutional rights to due process of law or against unreasonable seizure of his person. I consider the holding of the majority in the case before us to be contrary to the current trend in the law which recognizes that minors have some fundamental constitutional rights which cannot be overriden by parents.

". . . . . .

". . . 'Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.' (Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52, 74.)

"In In re Scott K. (1979) 24 Cal.3d 395, 401, our state high court made clear that '[m]inors are, however, persons under our Constitution possessed of rights that governments must respect.[4/] (Tinker v. Des Moines School Dist.

"4/ Minors are 'entitled to constitutional protection for freedom of speech, Tinker v. Des Moines School District, 393 U.S. 503 (1969) [21 L.Ed.2d 731, 89 S.Ct. 733], West Virginia State

(1969) 393 U.S. 503, 511 [21 L.Ed.2d 731, 740, 89 S.Ct. 733].) Fourth Amendment protection may be inferrable from the court's recognition of minor's rights to privacy, e.g., a state may not condition a minor's decision to have an abortion on parental consent (Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52 [49 L.Ed. 2d 788, 96 S.Ct. 2831]); nor may it because of

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Board of Education v. Barnette, 319 U.S. 624 (1943) [87 L.Ed. 1628, 63 S.Ct. 1178]; equal protection against racial discrimination, Brown v. Board of Education, 347 U.S. 483 (1954) [98 L.Ed. 873, 74 S.Ct. 686]; due process in civil contexts, Goss v. Lopez, 419 U.S. 565 (1975) [42 L.Ed.2d 725, 95 S.Ct. 729]; and a variety of rights of defendants in criminal proceedings, including the requirement of proof beyond a reasonable doubt, In re Winship, 397 U.S. 358 (1970) [25 L.Ed.2d 368, 90 S.Ct. 1068], the prohibition of double jeopardy, Breed v. Jones, 421 U.S. 519 (1975) [44 L.Ed.2d 346, 95 S.Ct. 1779], the rights to notice, counsel, confrontation and cross-examination, and not to incriminate oneself. In re Gault, 387 U.S. 1 (1967) [18 L.Ed.2d 527, 87 S.Ct. 1428], and the protection against coerced confessions, Gallegos v. Colorado, 370 U.S. 49 (1962) [8 L.Ed.2d 325, 82 S.Ct. 1209]; Haley v. Ohio, 332 U.S. 596, (1948) [92 L.Ed. 224, 68 S.Ct. 302].' (Carey v. Population Services International, supra, 431 U.S. 678, 692, fn. 14 [52 L.Ed.2d 675, 689, 97 S.Ct. 2010, 2020].)"

youth restrict one's access to contraceptives (Carey v. Population Services International, supra, 431 U.S. 678).'

"I recognize that In re Scott K. also set forth the principle that '[b]y no means are the rights of juveniles coextensive with those of adults. (See In re Roger S. (1977) 19 Cal.3d 921, 928 [141 Cal.Rptr. 298, 569 P.2d 1286].) Minors' rights are often legitimately curtailed when the restriction serves a state's interest in promoting the health and growth of children.' (See Prince v. Massachusetts (1944) 321 U.S. 158, 168-170 [88 L.Ed. 645, 653-655, 64 S.Ct. 438]; Ginsberg v. New York (1968) 390 U.S. 629, 638 [20 L.Ed.2d 195, 203, 88 S.Ct. 1274].)

"That the principles set forth in In re Scott K. mandate a holding in the case at bench that the minor was illegally detained and arrested in spite of the mother's direction to the police officers is found in an observation by the In re Scott K. court. After pointing out that minors' rights may be legitimately curtailed when a restriction serves a state's interest in promoting the health and growth of children, the court cogently observed: 'Search and seizure laws, however, hardly seem disruptive or otherwise inconsistent with the state's interest in child welfare. It is established that minors have a liberty interest that entitles them to due process whenever a state initiates action to deprive them of liberty. (In re Gault, supra, 387 U.S. 1; Goss v. Lopez (1975) 419 U.S. 565, 574 [42 L.Ed.2d 725,

734, 95 S.Ct. 729]; In re Winship (1970) 397 U.S. 358, 367 [25 L.Ed.2d 368, 377, 90 S.Ct. 1068]; In re Roger S., supra, 19 Cal.3d 921; In re Arthur N. (1976) 16 Cal.3d 226 [127 Cal.Rptr. 641, 545 P.2d 1345].) Enforcement of search and seizure protection helps ensure that the fact-finding process conforms with standards of due process. . . ." (Appendix A, pp. 15-19.)

While Scott K. rejected a consent principal as applied to searches, it necessarily follows that a parent cannot consent to her child's unlawful warrantless arrest. A seizure of a person constitutes at least as great an intrusion on personal liberty as a seizure of property. (Payton v. New York (1980) ___ U.S. ___, 63 L.Ed.2d 639, 100 S.Ct. 1371.)

CONCLUSION

The majority decision of the California Court of Appeal holds that a mother's right of supervision and control over her child outweighs her son's constitutional right to be free from unreasonable search and seizure. The power of a parent to consent to her son's arrest is a disruptive weapon which acts to undermine family relationships rather than support them. In giving parents this unprecedented right, the instant decision goes directly against the current trend in this Court to recognize that minors have constitutional protections independent of their parents. Thus, the decision reaches, and wrongly decides, an important federal question that has not been, but should be, settled by this Court. (Rules of the Supreme Court of the United States, effective June 30, 1980, rule 17.1(c).)

DATED: July 9, 1980

Respectfully submitted,

QUIN DENVIR
State Public Defender

By _____
STEFFAN IMHOFF
Deputy State Public Defender

Attorneys for Petitioner

APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re DAVID W., a Person Coming under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. DAVID W., a minor, Defendant and Appellant.	2 Crim. No. 35263 (Super. Ct. No. J 006299)

COURT OF APPEAL-SECOND DIST.
FILED
MAR 18 1980
CLAY ROBBINS, JR. Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County. Terry J. Hatter, Jr., Judge. Affirmed.

Quin Denvir, State Public Defender, under appointment by the Court of Appeal, and Gretchen Dumas, Deputy State Public Defender, for Defendant and Appellant.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Shunji Asari and Roy C. Preminger, Deputy Attorneys General, for Plaintiff and Respondent.

David W., a minor, has appealed from an order for "suitable placement," upon the court sustaining a petition (under Welf. & Inst. Code, § 602), which alleged that he had committed a felony, to wit, burglary, in violation of Penal Code section 459.[1/]

The minor confessed to the burglary charge after having been taken to the police station by police officers at his mother's request. Evidence of that confession forms the basis for the order sustaining the petition. The principal contention urged in this appeal is that the minor was illegally arrested and, therefore, the confession should have been suppressed. We reject this contention.

Factual Summary

At the hearing on the pretrial motion to suppress evidence, Gregory Johnson testified that he is a police officer for the City of Los Angeles. On March 8, 1979, he was told by Investigator Tietgen that Tietgen had been in

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1/ Appellant's opening brief states that he appeals from the order entered April 30, 1979 (the burglary offense described above) and the order entered February 6, 1979, wherein the minor was placed on probation for having committed the offense of grand theft on December 13, 1978. The time for filing a notice of appeal from the February 6 order expired on April 7, 1979, 60 days from the service of notice of entry of the order on the minor. (Cal. Rules of Court, rule 2.) We therefore treat the appeal as having been taken from the April 30, 1979, order only.

contact with appellant's mother "concerning one of her children who allegedly had been involved in a burglary of a house down the street, and she was to bring him in and she had failed to do so." Tietgen requested that Johnson and Officer Tyler go to the woman's home and find out when she would bring the minor in to the police station.

The officers went to the minor's home at approximately 8 a.m. on that day. In response to their knock on the front door, a young boy, age 10 to 12, answered the door. The officers were in uniform, identified themselves, and asked to speak to his mother. The boy asked them to wait a minute, and the officers waited on the porch while he went toward the back of the house.

The boy returned to the door within a short time and said, "My mother wants you to come in." He directed them to a bedroom, where they saw appellant's mother lying in bed. The officers explained the purpose for their visit, and asked the woman why she had not brought her son to the station the day before, as she had said she was going to do. She explained that her car had broken down. Officer Johnson asked, "Can you bring him in today?" and she responded that she could not because her car was still not working. She then pointed out appellant, who was sleeping in another bed

in the same room, and called to him to wake up. Johnson asked the woman when she would be able to bring appellant down to the station, and she said, "Well, you officers are here. You can take him down." She told the officers she had been having trouble with her son, and that if he had been involved in a burglary, she wanted to know about it because she would contact his probation officer. She then told the officers to take the appellant to the station.

Appellant's mother told appellant to get out of bed and get dressed because the officers were waiting for him. The minor, who was then 13 years of age, complied. Once he was dressed, he left with the officers and they drove him to Newton Station. Before the minor got into the police car, he was handcuffed by Johnson to prevent him from jumping out of the car en route.

At the station, the minor was read and had explained to him his Miranda rights, waived his rights, and confessed to the burglary.

Discussion

Appellant suggests that the court erred in not finding he was illegally arrested when the officers took him to the police station for questioning, because no evidence was introduced establishing probable cause to arrest him at

the time he was transported, and because no showing was made that he consented to being taken there.

Respondent concedes that no evidence was introduced at the hearing on the motion to suppress which establishes probable cause to arrest appellant when the officers went to appellant's home to talk to his mother. And it is true that, under ordinary circumstances, absent the consent of a suspect, his transportation to the police station for investigation is tantamount to an arrest, thus calling into play the Fourth Amendment safeguards. (Dunaway v. New York (1979) _____ U.S. _____, 60 L.Ed.2d 824, 99 S.Ct. _____.) However, we conclude that the failure to show the minor's personal consent is not dispositive here.

The facts of this case are unusual, and our inquiry does not involve standard issues of consent or waiver of Fourth Amendment rights. This is so because the officers made no demand of the minor requiring consent. Appellant's mother asked the officers to take him to the police station, and told the minor to accompany them. The uncontradicted evidence presented at the hearing was that the minor obeyed his mother, without protest. Likewise, the officers complied with the mother's request. There is nothing in the record to indicate that they ever suggested that they take the boy in,

or that that was their intent at any time prior to the mother's request. Their stated purpose for visiting appellant's home was not even to talk to the minor, but to inquire of his mother as to when she intended to bring him down to the station, as she had previously offered to do.

California courts have long recognized and acknowledged the supervisorial authority and control of parents over their children. (See, for example, Vandenberg v. Superior Court (1970) 8 Cal.App.3d 1048, 1055; In re Robert H. (1978) 78 Cal.App.3d 894, 898; People v. Egan (1967) 250 Cal.App.2d 433, 436; People v. Daniels (1971) 16 Cal.App.3d 36, 42.)

In assessing the right of a parent to consent to the commitment of a minor child to a state mental hospital, the California Supreme Court observed in In re Roger S. (1977) 19 Cal.3d 921, 928:

"Parents, of course, have powers greater than that of the state to curtail a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children' (citation), and to 'direct the upbringing and education of children.' (Citation.) As against the state, this parental duty and right is subject to limitation only 'if it appears that parental decisions will jeopardize the

health or safety of the child, or have a potential for significant social burdens.' (Citation.)."

Appellant contends that the foregoing authority is undermined by the recent California Supreme Court opinion in In re Scott K. (1979) 24 Cal.3d 395, which held invalid a father's consent to the search of a locked tool box owned by the son. We do not so interpret the Scott K. decision. Rather, that opinion renders a narrow holding based on its own facts. After a discussion of the rights of juveniles and the general rules concerning third-party consent, and citing without disapproval In re Roger S., supra, 19 Cal.3d 921, People v. Egan, supra, 250 Cal.App.2d 433, and People v. Daniels, supra, 16 Cal.App.3d 36, the court in the Scott K. case concludes at pages 404-405:

"The trial court here held that the father's authority was based on the combined circumstance of his ownership of the home and his duty to control his son. Yet neither fact shows the requisite link between the father's interest and the property inspected. Common authority over personal property may not be implied from the father's proprietary interest in the premises. . . . [¶] Here the People did not establish that the consenting parent had a sufficient interest under search and seizure law. The father claimed no interest in the box or

its contents. He acknowledged that the son was owner, and the son did not consent to the search."

We reject appellant's contention that Scott K., a decision based on proprietary interest in property, overruled sub silentio cases recognizing a parent's "responsibility and authority for the discipline, training and control of his children." (Vandenberg v. Superior Court, supra, 8 Cal.App.3d at p. 1055.)

We conclude that no constitutional violation occurred when the appellant (a 13-year-old boy) and the police officers both complied with the mother's request that he be taken to the station for investigation. Therefore, the trial court properly denied the motion to suppress the minor's confession.

Additional Point Raised

In a supplemental brief, appellant asserts that he is entitled to credit against his term of confinement for 53 days actually spent in presentence custody and 27 days' good time credit.

At the disposition hearing in this case, the court declared the offense to be burglary of the second degree, ordered that any physical confinement not exceed two years, and placed the minor in the custody of the probation officer for " suitable placement" pursuant to Welfare and Institutions

Code section 727.[2/] Under that section, the probation officer may select a foster home or boarding home for placement of the minor, as the probation officer sees fit.[3/]

A minor is entitled to credit against his term of confinement, for any time actually spent in custody prior to sentence. (In re Eric J. (1979) 25 Cal.3d 522, 536.) That credit is deducted from any time which the minor is required to serve in physical confinement pursuant to the disposition order. (In re Eric J., supra, 25 Cal.3d at p. 536; Welf. & Inst. Code, § 726; Pen. Code, § 2900.5.) Physical confinement is defined in section 726 as "placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to section 730, or in any institution operated by the Youth Authority."

2/ Unless otherwise stated, all further references to code sections are to the Welfare and Institutions Code.

3/ Section 727 expressly states that it applies to dependent children or minors adjudged wards of the court pursuant to section 601. However, the court is authorized by section 730 to utilize, in "sentencing" a minor adjudged a ward of the court under section 602, the provisions of section 727, in addition to the other restrictive commitments listed in section 730.

Suitable placement of a minor in a foster home or boarding home is not a commitment to physical confinement. Commitments involving physical confinement must be selected and ordered by the juvenile court judge. In In re Debra A. (1975) 48 Cal.App.3d 327, the court declared the minor a ward of the court pursuant to section 602, and ordered her suitably placed at the home of her aunt, "with the exception that the minor shall be placed in a juvenile home, ranch, camp, forestry camp, or county juvenile hall from Saturday at 5 p.m. to Monday at 8 a.m. for five consecutive weekends . . . determined by the probation officer." (Id. at pp. 328-329.) The appellate court held at page 330:

"The juvenile court judge may not delegate to a probation officer his discretion to determine the place of detention over the five weekends as ordered."

The court may, however, delegate to the probation officer the discretion to choose the foster home or boarding home which would be most suitable for the minor, since no physical confinement is involved in that placement. Because the minor was not committed to any of the facilities described in section 726, he is not entitled to any presentence credit against the time spent at the home chosen by the probation officer.

Nonetheless, we will proceed to compute the number of days' credit to which the minor would be entitled, if so confined, because of the possibility that circumstances may change. Under section 777, the probation officer has the right to file a supplemental petition at any time, should he determine that the previous court order has not been effective in the rehabilitation of the minor. He may request, and the court may order, that the minor be committed to physical custody. The minor would then be entitled to presentence credit as hereinafter set out.

Appellant has miscalculated the number of days' presentence credit to which he would be entitled. The record reflects that the minor was taken into custody on March 8, 1979. On March 28, 1979, he was released to his father when the adjudication hearing was continued because of the failure of the People's witnesses to appear. On April 16, 1979, after the petition was sustained, the minor was again detained at juvenile hall. He therefore spent a total of 36 days in presentence confinement, for which he would be entitled to credit.

Appellant further contends that he is entitled to 27 days' good time credit. Although the California Supreme Court has recently acknowledged the right of a sentenced felon

to presentence conduct credit (People v. Sage (1980) _____ Cal.3d _____), the Legislature has expressly provided that no such credit shall be given to juvenile offenders. Subdivision (c) of section 726 provides in part:

"As used in this section and in Section 731, 'maximum term of imprisonment' means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled."

In discussing this provision, the California Supreme Court observed in In re Eric J., supra, 25 Cal.3d at page 536:

"[I]t may be noted the statute expressly states the minor's maximum term is not to be reduced by 'time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code,' suggesting that precommitment credit would also have been expressly excluded, had that been the Legislature's intent." (Emphasis in the original.)

We therefore conclude that should the appellant be

physically confined within the meaning of section 726 he is entitled to 36 days' presentence credit, to be deducted from any period of physical confinement he may be required to serve, and is not entitled to presentence conduct credit.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

BURKE (Michael L.), J.*

I concur:

KINGSLEY, Acting P.J.

---

* Assigned by the Chief Justice of California.

JEFFERSON (Bernard), J.

I dissent.

I disagree with the majority's holding that the minor was neither illegally detained nor arrested when the officers took him to the police station for questioning -- based upon the mother's request and consent that he be taken from the home by the officers. It is my view that the minor was in fact arrested, and illegally so, when he was taken from his mother's home and transported in handcuffs to the police station. The fact that the officers state they used handcuffs to prevent the minor from escaping is an irrelevant consideration to the issue involved. It is also my view that the minor's confession -- made following an alleged Miranda warning and waiver -- was the product of an illegal arrest. As such, it was tainted with such illegality and was thus made inadmissible.

But even if the arrest were to be considered valid, the minor's confession should be held to have been illegally obtained on the basis that nothing short of providing a 13-year-old minor with an attorney should be constitutionally tolerated to permit the introduction of the evidence of a confession obtained by police

interrogation of such a minor. Finally, I disagree with the majority's holding that the minor was not entitled to credit for presentence good behavior.

I

The Illegality of the Minor's Detention and Arrest

I start with the premise set forth in Dunaway v. New York (1979) ___ U.S. ___, 60 L.Ed.2d 824, 838, in which the court observed "that detention for custodial interrogation -- regardless of its label -- intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest." In the case at bench, the minor's removal and transfer from his home to the police station by the police officers constituted a clear case of "detention for custodial interrogation." The inexorable result was that the minor was entitled to the safeguards against an illegal arrest. The facts demonstrate clearly that this was a warrantless detention which was not based upon any probable cause for arrest. It follows, therefore, that if this warrantless detention is to be constitutionally justified, it must be predicated upon the mother's consent and direction to the officers to take her 13-year-old boy into custody.

The majority takes the view that the principle of parental control of parents over their children justified the direction from the minor's mother to the police officers to detain and arrest the minor and take him to the police station. The decisional law, however, has made it crystal clear that the supervisory authority and control of parents over their children are not unlimited. It appears to be the majority's position that a 13-year-old minor possesses no independent constitutional rights to due process of law or against unreasonable seizure of his person. I consider the holding of the majority in the case before us to be contrary to the current trend in the law which recognizes that minors have some fundamental constitutional rights which cannot be overridden by parents.

Thus, in In re Roger S. (1977) 19 Cal.3d 921, the court recognized the significant trend of giving minors constitutional rights which cannot be waived by their parents by enunciating a holding imposing a limitation upon the right of a parent to have a minor committed to a state hospital. The court stated: "We have concluded that although the personal liberty interest of a minor is less comprehensive than that of an adult, and a parent or guardian not only may but must

curtail that interest in the proper exercise of his obligation to guide the child's development, in the area of admission to a state hospital a minor of 14 years or more possesses rights which may not be waived by the parent or guardian. Among these rights is the right guaranteed under the Fourteenth Amendment to the United States Constitution, and article I, section 7(a) of the California Constitution, to procedural due process in determining whether the minor is mentally ill or disordered, and whether, if the minor is not gravely disabled or dangerous to himself or others as a result of mental illness or disorder, the admission sought is likely to benefit him." (In re Roger S., supra, 19 Cal.3d 921, 927; fn. omitted.)

The Roger S. court also points out that the right of a minor to constitutional rights and protection -- a right which necessarily affects parental control -- has been reaffirmed by the United States Supreme Court. "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." (Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52, 74.)

In In re Scott K. (1979) 24 Cal.3d 395, 401, our state high court made clear that "[m]inors are, however, persons under our Constitution possessed of rights that governments must respect. [Citation.] Fourth Amendment protection may be inferrable from the court's recognition of minors' rights to privacy, e.g., a state may not condition a minor's decision to have an abortion on parental consent [citation]; nor may it because of youth restrict one's access to contraceptives [citation]." (Fn. omitted.)

I recognize that In re Scott K. also set forth the principle that "[b]y no means are the rights of juveniles coextensive with those of adults. [Citation.] Minors' rights are often legitimately curtailed when the restriction serves a state's interest in promoting the health and growth of children." (Id. at p. 401.)

That the principles set forth in In re Scott K. mandate a holding in the case at bench that the minor was illegally detained and arrested in spite of the mother's direction to the police officers is found in an observation by the In re Scott K. court. After pointing out that minors' rights may be legitimately curtailed when a restriction serves a state's interest

in promoting the health and growth of children, the court cogently observed: "Search and seizure laws, however, hardly seem disruptive or otherwise inconsistent with the state's interest in child welfare. It is established that minors have a liberty interest that entitles them to due process whenever a state initiates action to deprive them of liberty. [Citations.] Enforcement of search and seizure protection helps ensure that the factfinding process conforms with standards of due process. [¶] Justice should not be compromised by well-intentioned aims to correct transgressing youths, and the rehabilitative value of treating juveniles with fairness must not be underrated." (In re Scott K., supra, 24 Cal.3d 395, 402.) (Emphasis added.)

Since the minor's arrest and detention were illegal, his confession, secured after Miranda warnings and a waiver thereof, should be held to be inadmissible as the fruit of such illegality. (Wong Sun v. United States (1963) 371 U.S. 471.) The Wong Sun court set forth the basic test to guide us in the determination of whether evidence subsequent to an illegal arrest is to be deemed the product of such illegal arrest and admissible by posing the issue to be: "'[W]hether, granting establishment of the primary illegality, the evidence

to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" (Wong Sun, supra, 371 U.S. 471, 488.)

II

Any Interrogation of a 13-Year Old Minor in the Absence of Counsel Should Be Held Invalid Irrespective of Miranda Warnings and a Waiver Thereof

In the case at bench, it is revealed that, after the minor's detention and arrest, he was given the usual Miranda warnings and made a waiver thereof. It was only after such warnings and waiver that the minor confessed to the grand theft offense ultimately charged against him. Although the inadmissibility of the minor's confession may validly be placed upon the ground that such evidence was inadmissible as the fruit of the illegal arrest and detention, there exists a second ground of inadmissibility which is not dependent upon the question of the legality of the arrest and detention.

The assumption is made that a 13-year-old minor stands in the position of an adult insofar as the principle of law is concerned that a suspect may waive his constitutional right to remain silent and to have an attorney pursuant to the requirements of Miranda. Such

a principle of law should have no application to a 13-year-old minor. Irrespective of what the Supreme Court of the United States might hold with respect to the rights of minors under the federal Constitution, I am of the opinion that the California Constitution should be interpreted to preclude the application of a Miranda waiver to any minor who is not more than 13 years of age. It is an erroneous assumption to couch a principle of law in terms that such a minor is capable of understanding the constitutional rights involved in the Miranda warnings and in holding that he has the capacity to intelligently and knowingly waive such rights.

It is my view that such a waiver of constitutional rights should be held to be impermissible with respect to such a minor. I would interpret the California Constitution to provide that no interrogation by the police should be permitted of a minor 13 years of age or younger in the absence of counsel. It should be mandatory that an attorney be appointed for any such minor, and that no interrogation of such minor by a police officer be permitted unless there is a waiver by the minor upon advice of counsel appointed for such minor. It is my position that a mandatory appointment of counsel for a minor no more than 13 years of age

should be a prerequisite under the California Constitution for the validity of any waiver of the right to remain silent.

I recognize that in some respects the doctrine of Miranda has been relaxed, rather than strengthened. Thus, if it is believed that a victim's life hangs in the balance, a defendant may be interrogated about the victim's whereabouts without giving the Miranda warnings. "While life hangs in the balance, there is no room to require admonitions concerning the right to counsel and to remain silent." (People v. Dean (1974) 39 Cal.App.3d 875, 882; see, also, People v. Modesto (1965) 62 Cal. 2d 436, 446; People v. Riddle (1978) 83 Cal.App.3d 563, 572.) But in the situation presented in the case at bench of a 13-year-old minor, the Miranda protection should be strengthened by a mandatory requirement of appointment of counsel before any attempt is made by police officers to secure statements from such a minor. Since no counsel was appointed for the minor in the case at bench, I would hold that the minor's confession should be deemed inadmissible under the appropriate provisions of the California Constitution.

/

/

III

The Minor Is Entitled to Presentence Conduct Credit

The majority recognizes that the minor before us is entitled to credit against his term of confinement for any time spent in custody prior to the disposition confinement. (In re Eric J. (1979) 25 Cal.3d 522.) Although physical confinement is defined in Welfare and Institutions Code section 726, subdivision (c), as "placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority," I fail to see how placement of a minor in a foster home or boarding home does not constitute an actual physical confinement. Any placement outside of the minor's own home should be held to constitute a confinement against which presentence custody and conduct time should be credited.

The majority recognizes that the California Supreme Court in People v. Sage (1980) ___ Cal.3d ___, held that a felon sentenced to prison has the right to receive conduct credit for presentence custody time. It is true that the Legislature has expressly provided that no such credit shall be given to juvenile offenders. In

In re Eric J., supra, 25 Cal.3d 522, 536, the court made the observation with respect to Welfare and Institutions Code section 726, subdivision (c), that "it may be noted the statute expressly states the minor's maximum term is not to be reduced by 'time for good behavior or participation pursuant to Sections 2930, 2931, or 2932 of the Penal Code,' suggesting that precommitment credit would also have been expressly excluded, had that been the Legislature's intent." (Emphasis in original.)

I am unable to square the principles of equal protection of the laws discussed and approved in Sage with a recognition of any validity to Welfare and Institutions Code section 726, which precludes allowance to a minor of presentence conduct credit which is allowed to felons and misdemeanants.

I would thus hold that Welfare and Institutions Code section 726, subdivision (c), is invalid as a denial of the equal protection of the laws to minors insofar as it precludes the allowance of presentence conduct credit which would be allowed to adults convicted of either felonies or misdemeanors. Contrary to the holding of the majority, I would hold that the minor before us is entitled to 27 days of presentence conduct credit, as

well as to the 36 days of presentence custody credit recognized by the majority.

I would thus reverse the orders from which the appeal has been taken with instructions to the trial court to dismiss the petition.

JEFFERSON (Bernard), J.*

* Assigned by the Chairperson of the Judicial Council.

APPENDIX B

Los Angeles, Cal. APR 7 - 1950, 19

TITLE { Leo / Wells } No. 35263

PETITION FOR REHEARING DENIED

CLAY ROBBINS, *Clerk*

APPENDIX C

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

MAY 14 1980

I have this day filed Order

PETITION DENIED

In re: 2 Crim. *No.* 35263

People

vs.

David Levell W.

Respectfully,

G. E. BISHEL
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-

DAVID LEVELL W., a minor,)
)
Petitioner,)
)
v.)
)
THE STATE OF CALIFORNIA,)
)
Respondent.)

DECLARATION OF MAILING

(Rule 28.2)

I, STEFFAN IMHOFF, having been duly sworn, declare the following under penalty of perjury:

1. I am a member of the bar of the Supreme Court of the United States.

2. I represent the petitioner in the above-captioned case.

3. On July 9, 1980, a petition for writ of certiorari in the above-captioned case was placed in the first class mail at the Terminal Annex Post Office, Los Angeles, California, and addressed to:

Office of the Clerk
United States Supreme Court
Washington, D.C. 20543

Steffan Imhoff
STEFFAN IMHOFF
Deputy State Public Defender

Duly witnessed and sworn to before me, a Notary Public, this 9th day of July, 1980.

OFFICIAL SEAL
HAZEL B. GAVION
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires July 15, 1983

Hazel B. Gavion
NOTARY PUBLIC (or other notary notation)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-

DAVID LEVELL W., a minor,
Petitioner,
v.
THE STATE OF CALIFORNIA,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the United States Supreme Court and that I have on this date served a copy of the attached Motion for Leave to Proceed in Forma Pauperis, Affidavit in Support of Motion to Proceed in Forma Pauperis, and Petition for Writ of Certiorari by depositing the above in the United States Mail, postage prepaid and properly addressed to:

GEORGE DEUKMEJIAN
Attorney General's Office
Roy C. Preminger
Deputy Attorney General
3580 Wilshire Blvd., Room 800
Los Angeles, CA 90010

JOHN J. CORCORAN
County Clerk
For Del. to Hon. Terry J. Hatter, Jr., Judge
Criminal Courts Building
Los Angeles, CA 90012

JOHN K. VAN DE KAMP
District Attorney
Appellate Division
849 South Broadway
Los Angeles, CA 90014

CALIFORNIA COURT OF APPEAL
Second Appellate District
Division Four
3580 Wilshire Blvd.
Los Angeles, CA 90010

DAVID LEVELL WALLS
1804 S. Westmoreland
Los Angeles, CA

Dated this 9th day of July, 1980, at Los Angeles, California.

STEFFAN IMHOFF
Deputy State Public Defender
107 South Broadway, Suite 9111
Los Angeles, California 90012
Telephone: (213) 620-5469

80-5058

STATE OF CALIFORNIA

QUIN DENVIR, State Public Defender

Office of the State Public Defender

107 SOUTH BROADWAY, ROOM 9111
LOS ANGELES, CALIFORNIA 90012
(213) 620-5469

July 23, 1980

Michael Rodak, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

In re: DAVID LEVELL W., petitioner, v. THE STATE OF CALIFORNIA, respondent
No. 80-5058

Dear Mr. Rodak:

Please be advised that on July 18, 1980, the California Supreme Court ordered that the above-captioned case (sub nomine People v. David W.) not be published in the Official California Reports. (Cal. Const., art. VI, section 14; rule 976, California Rules of Court.)

Sincerely,

STEFFAN IMHOFF
Deputy State Public Defender
Member, Bar of the Supreme Court of the United States

SI:jmm

cc: California Attorney General